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W. Edward Johansen
11661 San Vicente Boulevard
Los Angeles CA 90049

In re Application of :
Pope, et al. :
Application No. 09/680,828 :
Filed: October 6, 2000 :
Attorney Docket No. POPE#6(CIP) :

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OFFICE OF PETITIONS
DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed January 31, 2002, to revive the above-mentioned application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned on January 29, 2001, for failure to respond to the "Notice of Missing Parts of Nonprovisional Application" (the "Notice") mailed November 28, 2000. The Notice set forth a period for reply of two months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). No reply was received within the allowable period and the application became abandoned on January 29, 2001.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application, a reexamination proceeding terminated under 1.550(d) or 1.957(b) or (c), or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply to the outstanding Office action or notice, unless previously filed.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy the requirements of item (1) above.

The Notice required petitioner to pay the basic filing (\$370.00), a fee for 29 total claims over 20 (\$9.00 per claim), a fee for 46 independent claims over 3 (\$42.00 per claim). See 37 CFR 1.16(a), (b), and (c). Petitioner is advised that the aforementioned fee amounts became effective for any fee paid after October 1, 2001. The Notice also required that petitioner file a declaration that complied with 37 CFR 1.63 and pay a surcharge of \$65.00 for the late filing of the declaration. See 37 CFR 1.16(e). Petitioner remitted a total of \$2,251.00 toward the satisfaction of the aforementioned fees, however; the total amount due is \$2,628.00. Petitioner did not provide a deposit account for any outstanding amounts to be charged against. Because the Office was not able to obtain the outstanding fees, it must be concluded that petitioner was not fully responsive to the Notice and has not, therefore, met the reply requirement of 37 CFR 1.137(b). Petitioner must remit the remainder of the fee due before a petition under 37 CFR 1.137(b) can be considered grantable.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy